

Office of Regulatory Management
Economic Review Form

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9 VAC 25-875
VAC Chapter title(s)	Virginia Erosion and Stormwater Management Regulation
Action title	Amendments to the Virginia Erosion and Stormwater Management Regulation (9VAC25-875 et seq.) in Response to Chapters 5 and 104 of the 2024 Virginia Acts of Assembly
Date this document prepared	May 17, 2024
Regulatory Stage (including Issuance of Guidance Documents)	Final Exempt

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Background: Chapters 5 and 104 of the 2024 Virginia Acts of Assembly (Del. Wiley, HB 656 and Sen. DeSteph, SB 365) revised state law to fix a “Catch-22” in the law which, if unresolved, would have stopped land-disturbing projects in certain localities on and after July 1, 2024. The “Catch-22” that these bills fixed arose because one provision of the 2016 Stormwater and Erosion and Sediment Control Consolidation Bill, Chapters 68 and 758 of the 2016 Acts of Assembly, stated that a locality that did not</p>
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	<p>operate a Virginia Stormwater Management Program could not approve erosion and sediment control plans for a project until DEQ had issued stormwater permit coverage for the project. However, another provision in this law stated that DEQ could not issue stormwater permit coverage for a project until the locality had approved the erosion and sediment control plans for the project. These bills fixed the “Catch-22” by setting up a sequence where the locality will review and approve erosion and sediment control plans, and obtain evidence of stormwater permit coverage before issuing its land disturbance approval. This rulemaking updates the Virginia Erosion and Stormwater Management (VESM) Regulation (9VAC25-875 et seq.) to be consistent with the change to state law.</p> <p>Direct costs: There are no direct costs associated with this change in the law and resulting regulation.</p> <p>Indirect Costs: There are no indirect costs associated with this change in the law and resulting regulation.</p> <p>Direct Benefits: This change in the law and resulting regulation resolve a “Catch-22” that would have stopped economic development projects in the approximately 150 localities that are required to operate an erosion and sediment control program (Virginia Erosion and Sediment Control Program (VЕСP) authorities) but are not required by the Code of Virginia to operate their own stormwater management program. In 2022, DEQ issued 141 Virginia Pollutant Discharge Elimination System (VPDES) permits for land-disturbing activity in localities that only have an erosion and sediment control program. DEQ issued 136 VPDES permits in the 2023. If the regulation is not changed to be consistent with the law, as amended, a comparable number of permits and associated development projects could be delayed or stopped because of the “Catch-22” problem. By resolving this “Catch-22” there is an indeterminate direct benefit equivalent to value of enabling the economic development projects that otherwise would have been caught in this “Catch-22” to proceed.</p> <p>Indirect Benefits: By allowing the economic development projects described above to proceed this change will have positive benefits in multiple economic sectors, including construction, the engineering and design community, and real estate sectors. This regulatory change eliminates confusion and provides clarity to both local VЕСP authorities and the regulated community.</p>
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(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) None.	(b) Indeterminate direct and indirect benefits by allowing economic development projects to proceed in the approximately 150 localities that operate VESCP authorities.
(3) Net Monetized Benefit	Indeterminate but clearly positive.	
(4) Other Costs & Benefits (Non-Monetized)	Aligning the regulation with the change in the law will provide clarity and reduce regulatory uncertainty.	
(5) Information Sources	Fiscal impact statements for Chapters 5 and 104 of the 2024 Virginia Acts of Assembly.	

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Background: These regulatory amendments are in response to changes to state law where no agency discretion is involved. Retaining the status quo is not an option.</p> <p>Direct Costs: In 2022, DEQ issued 141 VPDES permits for land-disturbing activity in localities that only have an erosion and sediment control program. DEQ issued 136 VPDES permits in the 2023. If the regulation is not changed to be consistent with the law, as amended, a comparable number of permits and associated development projects could be delayed or stopped because of the “Catch-22” problem.</p> <p>Indirect Costs: Indirect costs of economic development projects becoming caught in the “Catch-22” describe above could include economic losses to the construction, engineering and design, and real estate sectors. In addition to potentially delaying or stopping construction activities that result in land-disturbing activities of one acre or more in localities that only administer erosion and sediment control programs, indirect costs of maintaining the status quo could involve administrative confusion because of conflicting requirements and project delays.</p> <p>Direct Benefits:</p>
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	<p>There is no direct benefit to the agency or the regulated community with retaining the regulation as currently written. When requirements of law and regulation conflict, the requirements of the law prevail.</p> <p>Indirect Benefits: There is no indirect benefit to the agency or the regulated community with retaining the regulation as currently written.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Indeterminate but potentially significant.	(b) None.
(3) Net Monetized Benefit	Indeterminate but clearly negative.	
(4) Other Costs & Benefits (Non-Monetized)	Retaining the regulation as is would result in regulatory confusion as a result of the regulation being inconsistent with state law.	
(5) Information Sources	Fiscal impact statements for Chapters 5 and 104 of the 2024 Virginia Acts of Assembly.	

Table 1c: Costs and Benefits under Alternative Approach(es)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>The regulatory change that results from amendments to § 62.1-44.15:55 of the Code of Virginia by Chapters 5 and 104 of the 2024 Acts of Assembly is necessary to conform to changes in Virginia statutory law where no agency discretion is involved. Because of the change in Virginia law, there are not alternative approaches.</p> <p>Direct Costs: N/A</p> <p>Indirect Costs: N/A</p> <p>Direct Benefits: N/A</p> <p>Indirect Benefits: N/A</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits

	(a) N/A	(b) N/A
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	N/A	

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: The amendments to the VESM Regulation do not impose any cost on localities that only implement erosion and sediment control programs (i.e., VESCP authorities) because they will continue to do the same plan review and approval they are currently required to perform – without adding or removing a step or procedure.</p> <p>Indirect Costs: N/A</p> <p>Direct Benefits: Localities that serve as VESCP authorities will benefit from being able to approve land-disturbing activities that also require VPDES permit coverage because approval of the erosion and sediment control plan will no longer be dependent on issuance of the VPDES permit, eliminating the “Catch-22” that exists in the law in its current form.</p> <p>Indirect Benefits: A “Catch-22” in the law will not delay construction activity in the approximately 150 localities where they are the VESCP authority and DEQ is the stormwater management plan authority.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits

	(a) See table 1a.	(b) See table 1a.
(3) Other Costs & Benefits (Non-Monetized)	See table 1a.	
(4) Assistance	None	
(5) Information Sources	See table 1a.	

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: The amendment to the VESM Regulation does not have any impact on families because it is limited to a procedural change that VESCP authorities will implement when approving land-disturbing activities.</p> <p>Indirect Costs: N/A</p> <p>Direct Benefits: N/A</p> <p>Indirect Benefits: N/A</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Other Costs & Benefits (Non-Monetized)	N/A	

(4) Information Sources	N/A
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Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: The amendment to the VESM Regulation does not have any direct costs on small businesses because it is limited to a procedural change that VESCP authorities will implement when approving land-disturbing activities.</p> <p>Indirect Costs: None.</p> <p>Direct Benefits: This change in the law and regulation has indeterminate benefits for small businesses that otherwise would have been caught in the “Catch-22” described in table 1a.</p> <p>Indirect Benefits: This change in the law and regulation has indeterminate benefits for small businesses that otherwise would have been caught in the “Catch-22” described in table 1a.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) None.	(b) See table 1a.
(3) Other Costs & Benefits (Non-Monetized)	See table 1a.	
(4) Alternatives	N/A	
(5) Information Sources	See table 1a.	

Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

Change in Regulatory Requirements

VAC Section(s) Involved*	Authority of Change	Initial Count	Additions	Subtractions	Total Net Change in Requirements
9VAC25-875-300	(M/A):	8	0	0	0
	(D/A):	0	0	0	0
	(M/R):	2	0	0	0
	(D/R):	0	0	0	0
Grand Total of Changes in Requirements:					(M/A): 0 (D/A): 0 (M/R): 0 (D/R): 0

Key:

Please use the following coding if change is mandatory or discretionary and whether it affects externally regulated parties or only the agency itself:

(M/A): Mandatory requirements mandated by federal and/or state statute affecting the agency itself

(D/A): Discretionary requirements affecting agency itself

(M/R): Mandatory requirements mandated by federal and/or state statute affecting external parties, including other agencies

(D/R): Discretionary requirements affecting external parties, including other agencies

Cost Reductions or Increases (if applicable)

VAC Section(s) Involved*	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases
N/A				

Other Decreases or Increases in Regulatory Stringency (if applicable)

VAC Section(s) Involved*	Description of Regulatory Change	Overview of How It Reduces or Increases Regulatory Burden
N/A		

Length of Guidance Documents (only applicable if guidance document is being revised)

Title of Guidance Document	Original Word Count	New Word Count	Net Change in Word Count
N/A			

*If the agency is modifying a guidance document that has regulatory requirements, it should report any change in requirements in the appropriate chart(s).